

AMENDED IN ASSEMBLY APRIL 23, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 891

Introduced by Assembly Member Goldberg

February 23, 2001

~~An act to amend Sections 4059 and 4504 of, and to add Sections 3688.5 and 4504.1 to, the Family Code, relating to child support. An act to amend Section 17501 of the Family Code, relating to child support.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 891, as amended, Goldberg. Child support: disabled noncustodial parents.

Existing law provides that the Franchise Tax Board has the responsibility for accounts receivable management of child support delinquencies. The Franchise Tax Board is responsible for actions taken on any child support delinquency account transferred to that agency as necessary for recovering delinquent child support payments. Among other duties, the Franchise Tax Board is responsible for issuing and modifying earnings assignment orders on behalf of the local child support agency in order to take collection actions to recover delinquent child support payments.

Existing law establishes a state supplementary income program which provides a monthly income based on need, as specified, to aged, blind, or disabled persons.

This bill would provide that the Franchise Tax Board may not issue or modify an earnings assignment order, or otherwise attach the income of certain disabled obligors to the extent it would reduce their income below the amount they receive or would be eligible to receive under the

state supplementary income program for aged, blind, and disabled persons, as specified.

~~(1) Existing law governs child support, and sets forth guidelines for determining the annual net disposable income of each parent for these purposes. Amounts attributable to certain items must be deducted from the annual gross income of each parent in determining the annual net disposable income. Existing law also provides that if a court has ordered a nonecustodial parent to pay child support, payments for the support of the child made by the federal government pursuant to the Social Security Act or the Railroad Retirement Act because of the retirement or disability of the nonecustodial parent and transmitted to the custodial parent or other child support obligee each month shall be credited toward the amount ordered by the court to be paid for that month by the nonecustodial parent for support of the child, unless those payments were taken into consideration by the court in determining the amount of the support to be paid. Existing law requires local child support agencies to monitor child support cases and seek modifications when needed.~~

~~This bill would revise the above described provision relating to federal payments to include payments made by the Veterans' Administration and would require that all of those payments be taken into consideration in determining the amount of support to be paid by the nonecustodial parent. The bill would authorize the court to order a nonecustodial parent who is eligible for those benefits to apply for them if the court determines that the child who is entitled to support payments from the nonecustodial parent would be eligible for those benefits. The bill would also provide that the average amount of any recurring and significant expenses for the health-related costs of the nonecustodial parent shall be excluded when determining that parent's net disposable income.~~

~~This bill would also require local child support agencies to notify a disabled nonecustodial parent of the steps that he or she must take in order to modify a support order if he or she becomes disabled after a support order was entered. The bill would require those agencies to provide the parent with forms necessary to file a request for a hearing on modification of a support order. By imposing additional duties on local employees, the bill would create a state-mandated local program.~~

~~(2) Existing law establishes the State Supplementary Program for Aged, Blind, and Disabled which provides a monthly income based on need, as specified, to aged, blind, or disabled persons.~~



~~This bill would prohibit a court from making an order requiring a noncustodial parent who is retired or disabled or who meets other specified criteria to pay past or current support in an amount that would reduce the noncustodial parent's income below the amount the noncustodial parent is eligible to receive, or would have been eligible to receive, at the time the support obligation is or was incurred, under the State Supplementary Program for Aged, Blind, and Disabled.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: *yes no*.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 3688.5 is added to the Family Code, to~~
- 2 ~~SECTION 1. Section 17501 of the Family Code is amended to~~
- 3 ~~read:~~
- 4 17501. (a) Notwithstanding any other provision of law, on
- 5 and after January 1, 2000, pursuant to a cooperative agreement
- 6 entered into between the department and the Franchise Tax Board,
- 7 the Franchise Tax Board shall have responsibility for accounts
- 8 receivable management of child support delinquencies in support
- 9 of the child support activities of the Department of Child Support
- 10 Services, local child support agencies, and subject to all federal
- 11 and state laws, regulations, and directives relating to child support
- 12 programs prescribed by Title IV-D of the federal Social Security
- 13 Act.
- 14 (b) For purposes of this section, "child support delinquency"
- 15 means an arrearage or otherwise past due amount that accrues
- 16 when an obligor fails to make any court-ordered support payment

1 when due, which is more than 60 days past due, and the aggregate
2 amount of which exceeds one hundred dollars (\$100).

3 (c) For purposes of this section, the responsibility of the
4 Franchise Tax Board for “accounts receivable management” shall
5 be in accordance with federal mandates under Title IV-D of the
6 Social Security Act, state mandates, and regulations adopted by
7 the department, and shall include the following:

8 (1) A management structure that implements policy and
9 procedures consistent with all applicable federal and state
10 mandates and regulations and control systems that result in
11 compliance with these policies and procedures.

12 (2) Information technology applications, including hardware
13 and software, necessary to:

14 (A) Route accounts, based on decision rules, through a
15 sequence of actions most likely to result in collection of the
16 account.

17 (B) Gather asset information from third-party sources
18 including employers, financial institutions, credit bureaus, and
19 parent locator services and take mandated actions or other actions
20 that can be taken by a computer system in the most appropriate
21 sequence for recovering child support delinquency payments.

22 (3) Personnel systems necessary to hire and train staff as well
23 as to organize and direct their work for effective and efficient
24 recovery of child support delinquency payments.

25 (4) Customer service systems including telephone, written, and
26 other communication mechanisms giving delinquent obligors
27 methods to contact the Franchise Tax Board to resolve questions
28 and other issues arising solely from the Franchise Tax Board’s
29 actions on their delinquent account.

30 (5) Actions on any child support delinquency account
31 transferred to the Franchise Tax Board taken by computer or by
32 staff as necessary for recovering delinquent child support
33 payments as follows:

34 (A) Issuing and modifying earnings assignment orders in the
35 name and on behalf of the local child support agency, pursuant to
36 Section 5246, as necessary in order for the Franchise Tax Board to
37 take collection actions to recover delinquent child support
38 payments. ~~It~~

1 (i) In no event shall any modification to a notice of assignment
2 reduce the current support amount to be withheld below the
3 amount ordered by the court.

4 (ii) In no event shall the Franchise Tax Board issue or modify
5 an earnings assignment order, or otherwise attach the income of
6 an obligor, to the extent that it would reduce the obligor's income
7 below the amount the obligor receives, or, but for excess income
8 as described in Section 416.1100 et. seq. of Part 416 of Title 20 of
9 the Code of Federal Regulations, would be eligible to receive as
10 Supplemental Security Income/State Supplementary Payments
11 (SSI/SSP), pursuant to Section 12200 of the Welfare and
12 Institutions Code. This subparagraph shall only apply to obligors
13 who are disabled, meet the SSI resource test, and supply the local
14 child support agency with a copy of an eligibility letter proving
15 their qualification for, and receipt of, any of the following benefits:
16 SSI/SSP, Social Security Disability Insurance, In-Home
17 Supportive Services, or Medi-Cal/Medically Needy program
18 benefits.

19 (B) Working with obligors and negotiating a payment schedule
20 to the extent allowed by state and federal law and in accordance
21 with regulations established by the department.

22 (C) Consulting information sources and third parties to locate
23 obligors and their assets.

24 (D) Coordinating with the counties and the department for
25 withholding issuance, renewal, or suspension of licenses or
26 passports as the process relates to delinquent child support
27 obligors.

28 (E) Filing bankruptcy or estate claims, and filing liens in civil
29 actions.

30 (F) Issuing levies.

31 (G) Issuing warrants to direct a levying officer to seize and sell
32 property of the obligor or other actions that may be taken by a
33 levying officer.

34 (H) Monitoring paying accounts and keeping local child
35 support agencies informed as to any payments received by the
36 Franchise Tax Board and status thereof.

37 (I) Coordinating with the counties to refer obligors to the
38 county when a court action may be an appropriate course of action
39 as so deemed by the county.

1 (J) Taking any other mandated actions directed by the
2 department necessary for the effective and efficient recovery of
3 delinquent child support payments.

4 (d) (1) The local child support agency shall transfer child
5 support delinquencies to the Franchise Tax Board in the form and
6 manner and at the time prescribed by the Franchise Tax Board
7 pursuant to paragraph (2) of subdivision (a) of Section 19271 of
8 the Revenue and Taxation Code.

9 (2) The department shall adopt regulations to establish a
10 process pursuant to which a local child support agency may request
11 and shall be allowed to rescind or otherwise recall the transfer of
12 an account from the Franchise Tax Board under limited
13 circumstances specified by the department.

14 (e) If a child support delinquency exists at the time a case is
15 opened by the local child support agency, the responsibility for the
16 enforcement and collection of the delinquency shall be transferred
17 to the Franchise Tax Board no later than 30 days after receipt of the
18 case by the local child support agency. Any reference to the local
19 child support agency in connection with accounts receivable
20 management of child support delinquencies shall be deemed a
21 reference to the Franchise Tax Board.

22 (f) After a local child support agency transfers a delinquent
23 child support obligation to the Franchise Tax Board pursuant to
24 this section, the local child support agency shall continue to
25 facilitate resolution of the child support obligation in coordination
26 with the Franchise Tax Board. This transfer of responsibility for
27 accounts receivable management is in support of the local child
28 support agency solely for the administration of the enforcement
29 and collection of child support delinquencies and shall not in any
30 manner transfer any responsibilities the local child support agency
31 may have and any responsibilities the Department of Child
32 Support Services may have as the Title IV-D agency. A child
33 support delinquency, as specified in this section, shall be enforced
34 and collected by the Franchise Tax Board in accordance with
35 subdivision (c) and pursuant to Section 19271 of the Revenue and
36 Taxation Code. The local child support agency shall be responsible
37 for case management as described in subdivision (g).

38 (g) After a local child support agency transfers a case to the
39 Franchise Tax Board for accounts receivable management, the
40 local child support agency shall be responsible for providing case

1 management services, which, only for purposes of cases
2 transferred to the Franchise Tax Board includes, but is not limited
3 to:

4 (1) Responding to communications from both custodial
5 parents and noncustodial parents about case status, payment status,
6 and other questions, and facilitating communication between the
7 custodial or noncustodial parent and the Franchise Tax Board, as
8 appropriate.

9 (2) Establishing, maintaining, and updating as appropriate case
10 information relating to case status, account information, payment
11 history, and other relevant case specific information.

12 (3) Responding to requests from custodial and noncustodial
13 parents for modification of a support obligation pursuant to state
14 and federal regulations, notifying the Franchise Tax Board of
15 actions taken to modify a support obligation and, where
16 appropriate, requesting the case be transferred back to the local
17 child support agency from the Franchise Tax Board in accordance
18 with subdivision (d).

19 (4) Pursuing appropriate enforcement mechanisms, within the
20 timeframes and regulations prescribed by the department, which
21 may include:

22 (A) Submittal of the delinquent case to the Internal Revenue
23 Service Tax Refund Intercept Program.

24 (B) Submittal of the delinquent case to the Franchise Tax Board
25 for the tax refund intercept program.

26 (C) Submittal of the delinquent case to the State License Match
27 Program for suspension or revocation of licenses.

28 (D) Filing liens against a civil settlement in cases in which the
29 noncustodial parent is a party.

30 (E) Referral of the delinquent case to the district attorney for
31 criminal prosecution.

32 (F) Filing orders to show cause for civil contempt.

33 (G) Filing motions for an order of examination.

34 (H) Referral of delinquent cases to the United States Attorney
35 for criminal prosecution in interstate matters.

36 (5) Any other activities prescribed by the department.

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**All matter omitted in this version of the
bill appears in the bill as introduced in the
Assembly, February 23, 2001 (JR 11)**

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